

Service Date: May 21, 1998

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

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In the Matter of the Application of)	
Citizens Telecommunications Company)	UTILITY DIVISION
of Montana and Western Wireless Corp.)	
Pursuant to Section 252(e) of the)	DOCKET NO. D98.3.59
Telecommunications Act of 1996 for)	
Approval of their Interconnection)	ORDER NO. 6066
and Traffic Interchange Agreement.)	

FINAL ORDER

1. Citizens Telecommunications Company of Montana (CTC-Montana) entered into a negotiated interconnection agreement with Western Wireless Corp. (WWC). The agreement sets the terms to establish the physical interconnection and interchange of traffic for cellular and other 2-way mobile radio services originating or terminating on WWC's system.

2. CTC-Montana and WWC filed the parties' agreement, entitled INTERCONNECTION AND TRAFFIC INTERCHANGE AGREEMENT FOR CELLULAR AND OTHER 2-WAY MOBILE RADIO SERVICES Between Citizens Telecommunications Company of Nevada and Citizens Telecommunications Company of Montana and Western Wireless Corp.," (Agreement) with the Montana Public Service Commission (Commission) for approval on March 11, 1998. The Agreement was docketed as D98.3.59. Pursuant to 252(e) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 1996) (the "1996 Act"), the parties must submit the agreement to the Commission for approval prior to implementation.

3. The Agreement includes, *inter alia*, provisions (1) for the availability of facilities and arrangements to establish interconnection and interchange of traffic with other facilities WWC may require for operation of its system; (2) governing the use of facilities and services for reservation and assignment of prefixes, provision of supervisory tones, performance of tests and interruptions, prohibition of interference or impairment of service, and reports of trouble conditions; (3) for the billing and collection of charges for the facilities and arrangements provided under the Agreement; (4) for a credit to be made upon request of either party when use of the facilities furnished by the other party are interrupted due to trouble in such facilities; and (5) that the term of the Agreement is for one year after the date of applicable regulatory approval and may be extended automatically.

4. On March 16, 1998, the Commission issued a Notice of Application for Approval of Interconnection Agreement and Opportunity to Intervene and Comment requesting petitions for intervention by March 27, 1998, and comments by April 10, 1998. The Notice limited intervenors to addressing the grounds for Commission action identified in 252(e)(2)(A) of the 1996 Act. The Notice also stated that no public hearing was contemplated by the Commission unless requested by an interested party by March 27, 1998.

5. The Commission's published notice advised interested parties in the geographic areas affected by the agreement that intervention was limited and that the Montana Consumer Counsel (MCC) could be contacted to represent consumer interests. No comments or requests for intervention have been received by the Commission.

APPLICABLE LAW AND COMMISSION DECISION

1. Upon review of the agreement, the Commission makes the following findings.

2. The interconnection and traffic interchange agreement negotiated by CTC-Montana and WWC provides the terms to establish the physical interconnection and interchange of traffic originating or terminating on WWC's system in areas served by CTC-Montana.

3. Section 252(e)(4) of the 1996 Act provides that a negotiated agreement submitted for a state commission's approval must be approved or rejected within 90 days or it will be deemed approved. The Commission must approve or reject the parties' Agreement with written findings as to any deficiencies no later than June 10, 1998, or it will be deemed approved as submitted. 47 U.S.C. § 252(e)(1) and (4). Section 252(e)(2)(A) limits the grounds for rejection of an agreement reached by voluntary negotiation:

 GROUNDS FOR REJECTION.--The State commission may only reject--

 (A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. 252(a)] if it finds that

 (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

 (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

4. Notwithstanding the limited grounds for rejection in 47 U.S.C. 252(e)(2)(A), the state commission's authority is preserved in § 252 (e)(3) to establish or enforce other requirements of state law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Further, § 253 of the 1996 Act does not permit states to permit or impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

5. Unlike an agreement reached through arbitration, a voluntarily negotiated agreement need not comply with standards set forth in §§ 251(b) and (c). Sections 251(b), 252(c) and 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection that may not be deemed just, reasonable and nondiscriminatory, and which are not determined according to the pricing standards included in § 252(c) of the Act, as would be required in the case of arbitrated rates set by the Commission.

6. By approving this agreement, the Commission does not intend to imply that it approves of all the terms and conditions included in the Agreement and makes no findings herein on the appropriateness of many of the terms and conditions. Our interpretation of the 1996 Act is that §§ 252(a) and (e) prevent the Commission from addressing such issues in this proceeding.

7. No comments have been received from interested parties asserting that the agreement does not comply with federal law as cited above or with state telecommunications requirements. The MCC, who represents the consumers of the State of Montana, has not intervened or filed comments that indicate that he believes that the agreement is not consistent with the public interest, convenience and necessity. No other telecommunications carrier has filed comments to indicate that the agreement is discriminatory toward a carrier not a party to the agreement.

8. The Commission finds that the terms in the parties' agreement conforms to the standards required by the Act. In approving the agreement, the Commission is guided by provisions in federal and state law which have been enacted to encourage the development of competitive telecommunications markets. Section 69-3-802, MCA, for example, states that it is the policy of the State of Montana to encourage competition in the telecommunications industry

and to provide for an orderly transition to a competitive market environment. Specifically, we note that the agreement provides for reciprocal compensation for transport and termination of traffic, as required by § 251(b)(5) of the 1996 Act.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. CTC-Montana is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA. WWC is an authorized radio common carrier engaged in the business of providing mobile radio telecommunications services in the State of Montana.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. See generally, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (amending scattered sections of the Communications Act of 1934, 47 U.S.C. 151, et seq.). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

5. The Commission has jurisdiction to approve or reject the interconnection agreement (or portions thereof) negotiated by the parties and submitted to the Commission according to 47 U.S.C. § 252(e)(2)(A). Section 69-3-103, MCA.

6. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. § 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the CTC-Montana/WWC Agreement by June 10, 1998 or the agreement will be deemed approved.

ORDER

THEREFORE, based upon the foregoing, it is ORDERED that the interconnection agreement of the parties is approved as discussed herein, subject to the following condition:

1. The parties shall file subsequent amendments to their Agreement with the Commission for approval pursuant to the 1996 Act.

DONE AND DATED this 18th day of May, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.